

Attorney Docket No.: PTO-0037  
Inventors: Van Eyk et al.  
Serial No.: 09/934,297  
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**REMARKS/ARGUMENTS**

Claims 1-28 are pending in the instant applications. Claim 1 has been amended and new claims 29-56 have been added by Preliminary Amendment. Support for these claim amendments is provided throughout the specification, for example, at page 10 lines 15-19, at page 11, lines 16-18, page 14, lines 2-5, lines 7-12, page 15, line 2, page 16, lines 1-2, lines 12-16, line 30, line 32, and line 34 and page 17, line 2 and line 4. No new matter is added by these amendments.

Claims 1-28 have been subjected to a Restriction Requirement as follows:

Group I, claims 1-8, drawn to a method of separating a mixture of proteins in a biological sample, classified in class 436, subclass 516;

Group II, claim 9, drawn to a kit for separating a mixture of proteins in a biological sample, classified in class 435, subclass 4;

Group III, claims 10-15, drawn to a method of assessing cellular injury in a subject, classified in class 436, subclass 8;

Group IV, claims 16-17, drawn to a method of profiling

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proteins in a biological sample, classified in class 436, subclass 15;

Group V, claims 18-22, drawn to a method for detecting myocardial damage in a subject, classified in class 436, subclass 16; and

Group VI, claims 23-28, drawn to a method for assessing severity of skeletal muscle damage in a subject, classified in class 436, subclass 63.

The Examiner suggests that these Groups are distinct, each from the other.

Specifically, the Examiner has acknowledged the relationship of Groups (I, III, IV, V and VI) and II as product and process of use. However, the Examiner suggests that the product, namely the kit, can be used in materially different processes since specific instructions for use of the kit are not specified.

With respect to Groups I, III, IV, V and VI, the Examiner suggests that the claims are unrelated and are patentably distinct and independent inventions.

Applicants respectfully traverse this Restriction Requirement.

At the outset, it is respectfully pointed out that the basis for the restriction of Groups I, III, IV, V and VI as being

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patentably distinct and independent is improper.

MPEP 802.01 defines "independent" to mean that there is no disclosed relationship between the two or more subjects disclosed, that is, that they are unconnected in design, operation or effect, for example: (1) species in a genus where species are not usable together, as disclosed; or (2) process and apparatus incapable of being used in practicing the process.

MPEP 802.01 defines "distinct" to mean that the "two or more subjects as disclosed are related, for example, as combination and part (subcombination) thereof, process and apparatus for its practice, process and product made there, etc., but are capable of separate manufacture, use, or sale, as claimed, AND ARE PATENTABLE (novel and unobvious) OVER EACH OTHER."

Accordingly, the Examiner's statement that Groups I, III, IV, V and VI are patentably distinct and independent inventions" (emphasis added) is erroneous as inventions cannot be both independent and distinct.

Further, MPEP §803 provides two criteria which must be met for a restriction requirement to be proper. The first is that the inventions be independent or distinct. The second is that there would be a serious burden on the Examiner if the

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restriction is not required. A search of prior art relating to the kits of Group II will also reveal any art relating to processes for use thereof as set forth in Groups I, III, IV, V and VI. Accordingly, there is no serious burden placed upon the Examiner by including all claims in the instant application.

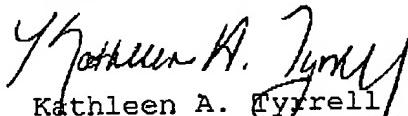
Thus, the instant Restriction Requirement meets neither of the criteria as set forth by MPEP §803 to be proper. Reconsideration and withdrawal of this Restriction Requirement is therefore respectfully requested.

However, in an earnest effort to be completely responsive, Applicants elect to prosecute Group I, claims 1 through 8, with traverse. It is respectfully requested that new claims 29-through 56 be included in Group I as well, since these claims each ultimately depend from the claims of Group I.

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Applicants believe that this reply is fully responsive to  
the Office Action of record.

Respectfully submitted,

  
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